IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6899 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJPUT PRIABHAI HEMABHAI

Versus

COLLECTOR

Appearance:

MR MC BAROT for Petitioners

GOVERNMENT PLEADER for Respondent No. 1

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 11/02/2000

ORAL JUDGEMENT

1. This petition is filed challenging the order of the Collector, Banaskantha, dated 16.12.1986 produced at Annexure "B" rejecting the application of the petitioners without hearing the petitioners as well as the order,

dated 29.2.88 passed by the Additional Chief Secretary, Revenue Department, Govt.of Gujarat wherein also the Secretary was pleased to reject the revision application filed by the petitioners challenging the order of the Collector.

2. There is a piece of land admeasuring 7 acres out of S.No.75 Vajegadh, Taluka Tharad (hereinafter referred to as the "said land"). It may noted that originally the said land was new tenure land and somewhere in 1982 it was converted into old tenure land.

3. The petitioners have in this petition contended that they purchased the piece of said land admeasuring 7 acres out of S.No.75 situated at Vajegadh, Taluka Tharad by a registered sale deed dated 27.1.1984 . Thereafter the petitioners applied for permission for converting the said land into non-agricultural purposes for constructing the residential houses. The Taluka Development Officer, Tharad by his order bearing No.C/1-Land/N.A./S.R, dated 31.12.1984 granted a permission for converting the said land into nonagricultural purposes. Said order has been produced by the petitioners at annexure "A" (page 10) to the petition.

4. Mr.M.C.Barot, Ld.advocate for the petitioners had invited my attention to the said order and the conditions attached to the said order, particularly condition No.36 wherein it has been stated that as regards the said land in question, the Collector, Tharad has jurisdiction to determine the premium for converting the said agricultural land into nonagricultural land. English translation of said condition No.36 reads as under:

> "(36) As per Hak Patrak No.285(2) after fixing the premium by the Deputy Collector, Tharad and after the amount is paid the permission for non-agricultural land would come into force".

5. From the record it appears that the petitioners had made application dated 3.1.1985 to the Collector to fix the premium. It appears from the record, particularly, the order of the Collector which has been produced at annexure "B" dated 16.12.1986 the Collector, Banaskantha without hearing the petitioners has held that the said land in question was a new tenure land and the Taluka Development Officer has given permission and therefore the said land has been converted into non-agricultural purposes. He further held that there was a breach of conditions and therefore the new tenure

land can not be converted into non-agricultural land as there is no specific provision in this behalf.

6. Being aggrieved and dissatisfied with the said order the petitioners filed revision application under section 211 of the Bombay Land Revenue Code and the Additional Chief Secretary, Revenue Department, State of Gujarat by order dated 29.2.1988 was pleased to confirm the said order of the Collector.

7. Being aggrieved and dissatisfied with the aforesaid orders, Ld.Counsel Mr.M.C.Barot has challenged the same on the ground (i) that the Collector has not heard the petitioners before passing the order, (ii) that the reasoning of the Collector is also not correct because by virtue of the order of the Taluka Development Officer, Tharad the Collector has power to fix the premium on the land in question.

8. As regards jurisdiction of the Collector and as to whether the Taluka Development Officer has power or not Mr.M.C.Patel, Ld.counsel for the petitioners has relied upon the decision of this court in the case of MINABEN ARVINDLAL GANDHI vs STATE OF GUJARAT & ORS reported in 1992(1) GLR 439. In that case the learned judge after considering the provisions of Bombay Land Revenue Code as well as provisions of Panchayat Act in para 6(viii) of its judgment on page 419 has observed as under:

> "(viii) Mr.P.J.Vyas, learned advocate for petitioners is right in submitting that the first respondent has, in fact, misconstrued the two resolutions. The first respondent has construed the second resolution dated 16.10.1982 as withdrawing power from TDO to grant permission for non-agricultural use. What is achieved by the second resolution is to see that the amount of premium is not fixed by the TDO and that it is fixed by the Collector/Deputy Collector or Revenue Officer. Such amount of premium after it is fixed by the Revenue Officer is to be paid by the applicant. The only flaw in the order of the TDO granting permission for nonagricultural use therefore was that he himself fixed the amount of premium and he did not refer the matter to the Collector/Deputy Collector or Revenue Officer for fixing the amount of premium. I do not think that by such a lapse entire order of the TDO granting permission for nonagricultural use becomes non-est or without jurisdiction. He has

undoubted jurisdiction to grant permission for nonagricultural use because of the operation of Section 157 of Gujarat Panchayats Act and subsequent delegation of power by the District Panchayat . By operation of Section 157 of Gujarat Panchayats Act as held by this court in the case of M/s S.Kumar Builders, Baroda vs State of Gujarat reported in [1981(1)] XXX(1) GLR 382 the power which the Taluka Panchayat exercised under Section 65 of the Code is an executive or administrative power and therefore same could be exercised by TDO under section 123(1) of the Gujarat Panchayats Act. The TDO, therefore, has undoubted power to grant permission for nonagricultural use under section 65 of the Code and resolution dated 16.10.82 does not take away such power. It simply conditions the said power by providing that the amount of premium shall be determined by the Collector/Deputy Collector or Revenue Officer. This flaw in the order of the TDO dated 4.1.82 is not fatal so as to render entire order non-est. In my opinion, the first respondent was clearly in error in setting aside the order of the TDO solely on the ground that he has no power to grant permission for non-agricultural use. If there was omission on the part of TDO in referring the matter to the Collector/Deputy Collector/Revenue Officer for fixing the premium the first respondent ought to have directed the TDO to undertake that exercise or he could have atleast directed the Collector/Deputy Collector/Revenue Officer to fix the amount of premium and could have called upon the applicant to pay up amount of premium so fixed. He was not, in any way, justified in cancelling the permission for nonagricultural use which was already granted and it was utilised by the subsequent purchasers. I am, therefore, of the opinion that the order of the first respondent is required to be quashed and set aside insofar as by the said order he has cancelled the permission granted to respondent Nos 3 to 7 for nonagricultural use. As regards the amount of premium to be fixed the matter is required to be sent back to the TDO with direction that he may refer the matter to the Collector/Deputy Collector/Revenue Officer for determining the amount of premium to be paid by the applicant and after so ascertaining the amount of premium he is further directed to call upon the respondent Nos 3 to 7 to pay the

difference of amount of premium after giving credit of the amount of premium already paid by the respondent Nos 3 to 7."

9. In view of the judgment of this court the Taluka Development Officer has power to grant permission to convert the agricultural land to non-agricultural land. Therefore, the reasoning of the Collector to that extent is erroneous. However, Mr.Barot is also right in his submission that only the purpose for which the matter went to the Collector was to fix the premium price but the Collector did not do so, and that too without hearing him.

10. Mr.S.T.Mehta, Ld.APP has tried to support the order of the revisional authority. I am not impressed by the arguments raised by him.

11. In my opinion, Mr.Barot is right in his submission, more particularly, in view of the judgment of this court in the case of Minaben Arvindlal Gandhi (supra) that the TDO has power to grant permission and as per condition No.36 the Collector can give direction to fix premium price of the land in question. The Collectgor has not considered this aspect and did not hear the petitioner. Hence, the order of the Collector is hereby quashed and set aside. However, as I discussed earlier, the revisional authority has also not considered the matter in its right perspective. In view of the same the order passed by the revisional authority is also hereby quashed and set aside.

12. I direct the Collector, Banaskantha to consider the matter of the petitioner afresh after considering his application dated 3/1/1985 as well as the order of the TDO dated 31.12.1984 particularly in view of the judgment of this court in the case of Meenaben (supra) within two months from the date of receipt of writ of this court and fix the premium price of the land in question at that relevant time.

13. Petition is accordingly allowed. Rule made absolute accordingly. No order as to costs.

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